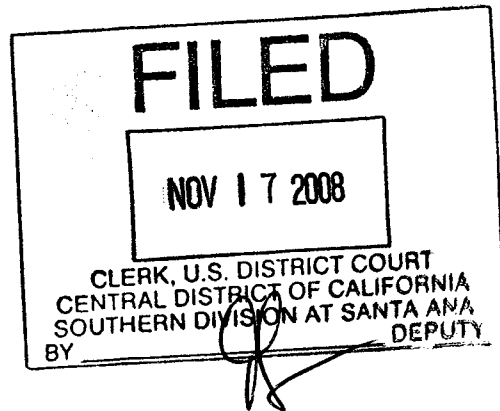


I HEREBY CERTIFY THAT THIS DOCUMENT WAS SERVED BY
FIRST CLASS MAIL POSTAGE PREPAID, TO ALL COUNSEL
(OR PARTIES) AT THEIR RESPECTIVE MOST RECENT ADDRESS OF
RECORD IN THIS ACTION ON THIS DATE.

DATED: 11-17-08

[Signature]
DEPUTY CLERK



UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA
EASTERN DIVISION

ARTABIUS WATT DARDEN,
Plaintiff,
v.

CALIFORNIA DEPARTMENT OF
CORRECTIONS,
Defendants.

Case No. EDCV 08-1402-GW (MLG)
MEMORANDUM AND ORDER DISMISSING
FIRST AMENDED COMPLAINT WITH
LEAVE TO AMEND

I. Facts

Plaintiff Artabius Watt Darden, who is currently a state prisoner incarcerated at the Chuckawalla State Prison in Blythe, California, filed a pro se civil rights complaint pursuant to 42 U.S.C. § 1983 on October 22, 2008. The cover page of the complaint named the California Department of Corrections ("CDC") as the Defendant. The allegations in the complaint identified the Wasco State Prison and the Chuckawalla State Prison as the Defendants. Plaintiff made a series of allegations against these Defendants. He claimed a denial of his right of access to the law library, denial of access to the grievance procedure, denial of the right to receive

1 mail, denial of medical care and retaliation. No facts are alleged
2 in support of these claims and no individual is identified as having
3 committed the misconduct.

4 On October 23, 2008, this Court dismissed the complaint with
5 leave to amend pursuant to the duty to screen civil rights complaints
6 filed by prisoners. See 28 U.S.C. § 1915(e)(2). The Court found that
7 the CDC and both prisons must be dismissed because they are state
8 agencies entitled to sovereign immunity under the Eleventh Amendment.
9 See *In re Pegasus Gold Corp.*, 394 F.3d 1189, 1195 (9th Cir. 2005);
10 *Natural Resources Defense Council v. California Dep't of Tranp.*, 96
11 F.3d 420, 421 (9th Cir.1996); *Taylor v. List*, 880 F.2d 1040, 1045
12 (9th Cir. 1989) (concluding that Nevada Department of Prisons was a
13 state agency entitled to Eleventh Amendment immunity); *Mitchell v.*
14 *Los Angeles Community College Dist.*, 861 F.2d 198, 201 (9th Cir.
15 1989). Plaintiff was instructed to file a second amended complaint
16 within 30 days against those corrections officers who allegedly
17 violated his constitutional rights.

18 On November 13, 2008, Plaintiff filed his first amended
19 complaint. The first amended complaint is identical to the original
20 complaint, naming the same defendants and suffering from the same
21 deficiencies. Accordingly, the first amended complaint shall be
22 dismissed with leave to amend.

23 Plaintiff shall be given one last opportunity to file a viable
24 complaint. If Plaintiff chooses to file a second amended complaint,
25 he should name those individuals as defendants who allegedly violated
26 his Constitutional rights. He must also provide the facts supporting
27 any allegations of misconduct against any newly named defendant. The
28 Court will then evaluate the complaint to determine whether it states

1 a cause of action. It is hereby **ORDERED**:

2 1. All claims against the current Defendants are dismissed
3 without leave to amend as to them.

4 2. Plaintiff will be give an opportunity to demonstrate that he
5 can state a viable claim against any individual defendant.
6 Accordingly, if Plaintiff wishes to pursue this action, he may file
7 a second amended complaint within **twenty-one (21) days** of the date
8 of this Order, remedying the deficiencies discussed above. The second
9 amended complaint must set forth all of the facts which support
10 Plaintiff's claims and may not refer to the original complaint. The
11 second amended complaint should be captioned "SECOND AMENDED
12 COMPLAINT," and should bear this case name. The second amended
13 complaint must clearly identify the specific acts on which the claims
14 are based. It should include the date, time, place, and circumstances
15 of the offending conduct, the names of the individuals who committed
16 the conduct, the full details of what each defendant did or failed
17 to do, and the damage or injury suffered by Plaintiff as a result.

18 Plaintiff is cautioned that he is responsible for presenting
19 factually accurate information to the court. A knowing
20 misrepresentation to the Court is punishable by sanctions, including
21 dismissal.

22 3. If Plaintiff decides not to pursue this action, he need not
23 file anything in response to this Order and the case shall be
24 dismissed without prejudice.

25 4. Plaintiff is cautioned that the failure to timely file a
26 second amended complaint will be construed by the magistrate judge
27 as his consent to dismissal of this action as to the defendants and
28 claims outlined above.

1 5. The Court's deputy clerk shall serve on Plaintiff a copy of
2 this memorandum and order and a blank civil rights complaint form
3 bearing the case number assigned to this action and marked to show
4 that it is a "Second Amended Complaint." If Plaintiff chooses to
5 continue prosecuting this action, Plaintiff must use this form to the
6 extent possible and not simply attach other documents to it and
7 attempt to incorporate claims by reference to the attachments. He
8 may, however, attach additional pages to detail his allegations, if
9 necessary.

10 **SO ORDERED**

11 Dated: November 17, 2008

12
13
14 

15 Marc L. Goldman
16 United States Magistrate Judge
17
18
19
20
21
22
23
24
25
26
27
28